

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
UA TUR 7/2018

4 May 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 33/9, 35/11, 31/3 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary arrest and detention under accusations of membership of a terrorist organization of Mr. **Muhittin Akman**, Ms. **Fatma Alan**, Mr. **Muhammet Turgay Baskan**, Ms. **Nesrin Cavus**, Mr. **Savas Demirel**, Mr. **Suat Durgun**, Mr. **Hasan Gemi**, Ms. **Gülnur Gemi**, Mr. **Nuh Görgün**, Mr. **Bekir Karayel**, Mr. **Bahtiyar Öztürk**, Mr. **Hasan Yasar** and Mr. **Sinan Yilmaz**. These persons are accused of being members of the so-called "Gülen" or "Gülenist" movement, an association founded by a Turkish national living in the United States of America, Mr. Fethullah Gülen. This movement is considered by the Turkish Government as "terrorist" and referred to as FETÖ (Turkish acronym for "Fethullahçı Terör Örgütü"). The movement is known by some of its followers as *hizmet* (which, in Turkish means "service").

None of these thirteen individuals have been the subject of previous communications by special procedures. However, concerns relating to various measures implemented under the state of emergency declared on 20 July 2016 and their reported serious negative impact on the enjoyment of fundamental human rights were expressed in a series of communications addressed to your Excellency's Government; the most recent ones include urgent appeal TUR 12/2017, allegation letter TUR 13/2017, urgent appeal TUR 1/2018, other letter TUR 2/2018, urgent appeal TUR 3/2018, urgent appeal TUR 4/2018 and allegation letter TUR 5/2018. Concerns were also expressed in a number of recent opinions adopted by the Working Group on Arbitrary Detention, notably opinions no. 1/2017, 38/2017 and 41/2017, in four press releases issued on 19 August 2016, 14

July 2017, 13 November 2017 and 17 January 2018, respectively, and by the Office of the High Commissioner for Human Rights (OHCHR), in its recent report to the Human Rights Council which provides an overview of key human rights concerns in Turkey in 2017, with a focus on the consequences of the state of emergency on the enjoyment of human rights.<sup>1</sup>

We thank your Excellency's Government for the replies to these communications. We have read all of them carefully but our main concerns remain unaddressed.

According to the information received:

*Muhittin Akman*

Mr. Akman is a former judge at the Criminal Court of first instance in the province of Diyarbakir. On 17 July 2016, he was arrested at his residence by a team from the Anti-Terrorism Unit of Diyarbakir under the supervision of the prosecutor on duty. The Prosecutor's Office in Diyarbakir issued a warrant for his arrest following the request of the Prosecutor's Office in Ankara. The legal basis for Mr. Akman's arrest included articles 309, 312 and 314/2 of the Turkish Penal Code as well as article 100 of the Turkish Criminal Procedure Code (probability of absconding and tampering with evidence). He was accused of being involved in the attempted coup of 15 July 2016 and of being a member of FETÖ.

On 20 July 2016, Mr. Akman was brought before a criminal magistrate and placed in detention. He was first held at the Diyarbakir Type D High Security Prison before being transferred to the High Security Prison in Sanliurfa.

In July 2017, the criminal charge that he was a member of a terrorist organization was brought before the Gaziantep 9<sup>th</sup> Heavy Criminal Court. The other accusation of involvement in the attempted coup of 15 July 2016 was dropped by the Gaziantep Prosecution Office on the grounds that there was no evidence.

Mr. Akman was released by the court on 10 January 2018 on the condition that he did not leave the country. However, his trial is still pending and the next hearing has been scheduled for 25 May 2018. He has not been acquitted and he is still under the threat of facing a sentence of at least seven and a half years imprisonment. He has been dismissed from his position as a judge and has lost his income, social benefits, medical insurance, and is prohibited from working as a lawyer.

*Fatma Alan*

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<sup>1</sup> [http://www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](http://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf)

Ms. Alan is a teacher from Körfez in the province of Kocaeli. She was arrested by the Turkish police at the Sakarya bus terminal on 19 September 2016. The police officers presented a warrant for her arrest issued by the Yalova Prosecution Office. She was accused of being a member of a terrorist organization on the basis of article 314 of the Turkish Penal Code.

Following her arrest, she remained in custody at a local police station until 23 September 2016. On that day, she was brought before a judge and placed in detention by the Yalova Heavy Penal Court, without any evidence being presented against her or any grounds for keeping her detained. She has been accused of having a bank account at Bank Asya, downloading the ByLock application, being member of any Gülen affiliated association, by making donations to charity organizations, and working for closed Gülen Movement affiliated institutions. She was subsequently transferred to the Gebze Female Indoor Prison where she remains detained.

Ms. Alan has two young children who are three and eight years old. The youngest child, who has a “psychological and dental disease problem” is in prison with her mother. However, the health care facilities at the prison do not seem to be sufficient for her treatment, and she cannot go to a health institution outside of the prison, as she cannot leave her mother. The older daughter is staying with her grandparents because her father is missing. She has been diagnosed with a “depressive temperamental adjustment disorder” because she lives separately from her parents and her sister.

#### *Muhammet Turgay Baskan*

Mr. Turgay Baskan is a former prosecutor at the Chief Public Prosecution Office in Diyarbakir. On 17 July 2016, he was arrested at his residence by a team from the Anti-Terrorism Unit of Diyarbakir under the supervision of the prosecutor on duty. The Prosecutor’s Office in Diyarbakir issued a warrant for his arrest following the request of the Prosecutor’s Office in Ankara. Mr. Turgay Baskan was accused of being involved in the attempted coup of 15 July 2016 and of being a member of FETÖ. The legal basis for his arrest included articles 309, 312 and 314/2 of the Turkish Penal Code as well as article 100 of the Turkish Criminal Procedure Code (probability of absconding and tampering with evidence).

On 21 July 2016, Mr. Turgay Baskan was brought before a criminal magistrate and placed in detention. He was first held at the Diyarbakir Type D High Security Prison before being transferred to the High Security Prison in Sanliurfa, where he remains in pre-trial detention.

#### *Nesrin Cavus*

Ms. Cavus is a housewife from Izmir who is the mother of three under-aged children. On 26 April 2017, at 2 a.m., Turkish police officers came to the house of Ms. Cavus in order to arrest her husband. They searched the house and told her that if she did not tell them where her husband was, they could arrest her. During the search, the officers insulted and pressured her and her two daughters, but she told them that she did not know where her husband was. One of the police officers then made a phone call and the voice on the phone, presumably the attorney general, said “take and arrest her.” She was then arrested without a warrant and taken to the police station. When asked, the police told her that “this is a secret investigation” and they could not tell them anything other than a brief mention that the case was “related to” FETÖ/PDY (*Paralel Devlet Yapılanması – Parallel Government Formation*). That night and the following two days at the police station, Ms. Cavus was allegedly exposed to intense psychological torture.

On 28 April 2017, Ms. Cavus appeared before a judge at the Izmir 2<sup>nd</sup> Penal Court of Peace and she was placed in detention, without any evidence being presented against her or any grounds for keeping her detained, on the basis of alleged membership of an armed organization under article 314/2 of the Turkish Penal Code. The judge asked her where her husband was. When she told him that she did not know, the judge said, “Well, I will send you to prison, then let us see how your husband can flee.” Ms. Cavus has been accused of having a bank account at Bank Asya, downloading the ByLock application, and some accusations about her missing husband. She was transferred to the Sakran Women’s Prison in Aliaga, Izmir.

The trial of Ms. Cavus took place before the Izmir 15<sup>th</sup> High Criminal Court on 26 April 2018. During the trial, the judge often questioned and commented on her fugitive husband and accused Ms. Cavus for her husband’s connections and the allegations against him. In addition, she was not allowed to read her prepared plea. Ms. Cavus was subsequently sentenced to six years and three months imprisonment. Although her lawyer has filed an appeal, she has not been released pending the appeal. Her detention of more than one year has taken a toll on her health, and it is now causing psychological problems for her three under-aged children.

#### *Savas Demirel*

Mr. Demirel is a retired police commander who usually resides in Keçiören, Ankara. He was arrested by the Turkish police on 24 July 2016 at 4:55 a.m. at his residence. The police officers showed a document when they arrested him, indicating that he was a member of the Gülen movement but the contents of this

document were unclear and it is also not known if the document had been issued by a public authority.

Mr. Demirel was handcuffed and immediately taken to Ankara Police Headquarters in Akköprü, Ankara where he was questioned by the police without the presence of a lawyer. During the entirety of his detention at the police station, he was not allowed any contact with his family members.

Mr. Demirel was initially held at the police station for 10 days for questioning before appearing before a Court of Peace of Turkey on 4 August 2016. On that day, he was placed in detention by a Judge of Penal Peace, without any evidence being presented against him or any grounds for keeping him detained. The authorities imputed the following reasons for his detention; using violence and trying to annihilate the Turkish Republic, membership of an armed organization under article 314 of the Turkish Penal Code, and given that the evidence had not yet been collected that there was a suspicion that he might escape. Among other things, he has been accused of downloading the ByLock application, of joining some assemblies and press conferences organized by retired police officers to talk about retirement and possession of two books entitled ‘mefküne yolculuğu’ and ‘yaradılış gerçeği’.

Mr. Demirel was subsequently transferred to Sincan Department of Corrections Prison, a high security prison, where he is being held in an overcrowded and unsanitary cell with no access to medical care. As a retired police commander, Mr. Demirel has faced a very difficult treatment by the police officers and he has allegedly been subjected to torture, ill-treatment and other physical abuse while in custody.

The health situation of Mr. Demirel is deteriorating. He suffers from diabetes, and he has to take his medicines (insulin) every day. He also has to keep his sugar levels on the middle range by walking and eating meals for diabetes patients, but prison conditions are not appropriate for this. Mr. Demirel also suffers from chronic high blood pressure and has a problem with his shoulder, but he cannot go to hospital for a check-up or ask a doctor.

### *Suat Durgun*

Mr. Durgun is the manager of a bookstore in Istanbul. The company for which he works has been accused of belonging to FETÖ. On 14 June 2017, police officers came to the residence of Mr. Durgun and inquired about his whereabouts. Upon

request, his wife gave the officers the telephone number of her husband. The police officers then called him and asked him to come to the police station, as they had a file to show him. He came to the police station where he was questioned and eventually arrested on the basis of a “file” for having a twitter account. The contents of this file are unknown. The legal basis for his detention is article 100/3-a-11 of the Turkish Criminal Procedure Code.

On 17 June 2017, Mr. Durgun was brought before a judge in the presence of a lawyer and placed in detention. The authorities say that he holds a twitter account @007analiz which is connected to his mobile phone and e-mail address. The account has 10,000 followers and it has allegedly retweeted the tweets of an individual considered a terrorist in Turkey and made tweets praising FETÖ/PDY and some insulting the Turkish authorities. As Mr. Durgun has worked for the company, Kaynak Holding, for several years as a store manager, the authorities believe that there is a possibility that he could be guilty. He is suspected of belonging to FETÖ/PDY and of having a bank account at Bank Asya. Another reason given for Mr. Durgun’s detention is that other individuals in the same situation, who have a twitter account, are on the run.

Mr. Durgun was initially detained at the Umraniye police station in Istanbul but due to lack of space, he was transferred to the Atakent police station in Istanbul. He was subsequently transferred to the Metris Prison for two days before being sent to the Silivri Prison in Istanbul where he continues to be held in pre-trial detention. A court hearing in his case has been scheduled for 28 May 2018 before the 2<sup>nd</sup> Assize Court in the city of Bingol.

#### *Hasan and Gülnur Gemi*

Mr. and Ms. Gemi are both teachers in Manisa. They were arrested by the Turkish police on 3 September 2016 at their residence, in the presence of two of their three children. The police officers did not show any arrest or search warrant, and they were not informed about the reasons for their arrest. When asked, they were told by the police that “this is a secret investigation,” and they could not tell them anything other than a brief mention that the case was related to FETÖ/PDY.

Mr. and Ms. Gemi were handcuffed and immediately taken to the Manisa Provincial Security Directorate. Upon arrival at the police station, they were asked why they bought the Zaman newspaper, why they sent their children to the colleges of the Gülen movement and why they offered these newspapers and colleges to others. The family members were not aware of their whereabouts for a couple of hours after their arrest, and during the entirety of their detention at the police station, they were not allowed any contact with their family members.

Mr. and Ms. Gemi both suffered physical and psychological torture in custody. They were threatened and insulted by police officers and called a traitor and a terrorist. They were not allowed to go to the toilet or to take their medication (Mr. Gemi suffers from asthma and he cannot breathe properly and Ms. Gemi from inflammatory rheumatism), until Ms. Gemi had to be taken urgently to the hospital. After Ms. Gemi was taken to the hospital, she was allowed to take medication. However, the insults continued.

Mr. and Ms. Gemi remained in custody for 19 days before they were brought before a judge on 21 September 2016. They were presented with a series of allegations and questions, but without any evidence being presented against them or any grounds for keeping them detained. All of the evidence referenced by the authorities was circumstantial and factually incorrect. They were also not permitted to present any information in their defence. The judge decided to put them both in detention under suspicion of membership of an armed organization under article 314 of the Turkish Penal Code. They were separated at that time and have not seen each other since. Mr. Gemi was subsequently transferred to the Manisa T-Type Closed Prison and Ms. Gemi to Manisa E-Type Closed Prison. They have been sleeping on the ground in the cells, as there have been up to 30 people in a cell designed for eight persons, and hence not enough beds for everyone.

The bill of indictment for Mr. and Ms. Gemi was presented 18 months after their arrest. In the bill of indictment for Ms. Gemi, she was accused of having downloaded the ByLock application. In the case of Mr. Gemi, the bill of indictment did not contain such accusation but a confession by a witness who was detained in the same ward as him.

On 27 March 2018, after a court hearing which lasted 30 minutes, Mr. Gemi was sentenced to eight years and nine months imprisonment on the basis of a witness statement by another detainee. On 12 April 2018, Ms. Gemi was sentenced to seven years and six months imprisonment. Appeals have been filed on behalf of both Mr. and Ms. Gemi. Ms. Gemi has subsequently been released pending the appeal, whereas Mr. Gemi remains in detention.

### *Nuh Görgün*

Mr. Görgün is an unemployed police officer from Bayburt. He was arrested by the Turkish police at his residence on 27 September 2016 at 7 a.m. in the morning. The police officers presented a warrant for his arrest issued by the Bayburt Public Prosecutor's Office. When asked, he was told by the police that "this is a secret investigation," and they could not tell him anything other than a brief mention that the case was related to FETÖ/PDY.

On 30 September 2016, Mr. Görgün appeared before the Bayburt Peace Court who ordered his detention on the basis of articles 100 and 101 of the Turkish Criminal Procedure Code. He was accused of being a member of a terrorist organization on the basis of article 314 of the Turkish Penal Code. He was subsequently transferred to Bayburt Provincial Security Directorate, and he is now being held in pre-trial detention at the Bayburt Closed M Type Prison Administration Prison.

#### *Bekir Karayel*

Mr. Karayel is an expert teacher from Izmir who has been working as a teacher at State institutions for 26 years. He was arrested at his home on 26 April 2017 at 2 a.m. by two police officers. The officers presented a warrant for his arrest issued by Izmir 4<sup>th</sup> Criminal Court of Peace. They searched the house and frightened Mr. Karayel's four children. He was then taken into custody and kept under surveillance at the Izmir Yesilyurt Police Station for nine days. Mr. Karayel has been arrested as per article 100/3 of the Turkish Criminal Procedure Code on the suspicion of being a member or sympathizer of the FETÖ/PDY terrorist organization. He has been accused of being a user of the ByLock phone application and of being a customer of Bank Asya.

On 4 May 2017, Mr. Karayel appeared before a judge at the Izmir 4<sup>th</sup> Criminal Court of Peace and he was placed in detention, without any evidence being presented against him or any grounds for keeping him detained. He was subsequently transferred to the Izmir Aliaga Sakran no.3 type T Prison where he remains in pre-trial detention. No date has been set for his trial. Mr. Karayel suffers from diabetes and a chronic cardiac disease. The food provided at the prison is not appropriate for his special diet. His medical condition is deteriorating and he continues to lose weight.

#### *Bahtiyar Öztürk*

Mr. Öztürk is a job security specialist from Izmir who owns his own company. He was arrested on 10 August 2016 at his residence by the Turkish police on the basis of an arrest warrant issued by the Izmir Public Prosecutor's Office. The legal basis for his arrest was article 314 of the Turkish Penal Code (membership in an armed organization) as well as article 90 of the Criminal Procedure Code.

Mr. Öztürk was initially held at a local police station. On 19 August 2016, he appeared before a court in Izmir. He was placed in detention and transferred to Izmir F Type High Security Closed Penal Execution Agency. He is now being held at the Menemen T Type Closed Penal Execution Agency where he continues to change wards, most recently on 22 March 2018.



The authorities claim that two phone lines belonging to the company where Mr. Öztürk is a partner are connected to ByLock. According to the findings of the National Intelligence Organization, these lines are registered to the ID number of Mr. Öztürk, although this is not the case. Mr. Öztürk had his first hearing before the 15<sup>th</sup> High Criminal Court in Izmir on 15 November 2017, and his second hearing was held on 4 April 2018.

#### *Hasan Yasar*

Mr. Yasar, a former Assistant Secretary-General of the Rectorate at Harran University in Sanliurfa, was taken into custody by the Turkish police on 24 July 2016, and he was formally arrested on 10 August 2016, on the basis of a warrant issued by a judge on duty at a court in Sanliurfa. He was accused of eradicating the constitutional order and of being a member of a terrorist organization (FETÖ), under article 314 of the Turkish Penal Code and article 5 of the Law on the Fight against Terrorism. He was subsequently transferred to the Sanliurfa-Hilvan Prison.

An indictment was issued against Mr. Yasar after he had spent six months in detention. He spent 16 months in the Sanliurfa-Hilvan Prison before being released at the end of 2017 on the condition that he should report to the police station three days a week.

#### *Sinan Yilmaz*

Mr. Yilmaz is a former senior judge at the Civil Court of first instance of the province of Sanliurfa. He has also worked as Rapporteur of the Turkish Constitutional Court and as seconded assistant lawyer at the European Court of Human Rights.

On 19 July 2016, Mr. Yilmaz was arrested at his residence by a team from the Anti-Terrorism Unit of Sanliurfa under the supervision of the prosecutor on duty. The Prosecutor's Office in Sanliurfa issued a warrant for his arrest following the request of the Prosecutor's Office in Ankara. He was accused of being involved in the attempted coup of 15 July 2016 and of being an active member of FETÖ, and the legal basis for his arrest included articles 309, 312 and 314/2 of the Turkish Penal Code as well as article 100 of the Turkish Criminal Procedure Code (probability of absconding and tampering with evidence).

On 20 July 2016, Mr. Yilmaz was brought before a criminal magistrate and placed in pre-trial detention. As the pro bono lawyer accorded to Mr. Yilmaz left for his military service, he requested a new lawyer from the bar association but that request was never responded to. He could not afford a privately practicing lawyer, as all transactions in relation to both his movable and immovable belongings had

been banned as an interim measure by the court. There were initially two accounts for the decision to detain Mr. Yilmaz, notably for taking part in the failed coup d'état and membership of a terrorist organization. The first charge was dropped following the decision of the prosecution "not to prosecute." This has reportedly been the case with all the other detained judges and prosecutors.

Mr. Yilmaz was detained at Sanliurfa High Security Prison for a total period of 479 days without any legitimate and plausible legal ground, being accused of membership of a terror organization along with more than 3000 other judges and public prosecutors. He was released on 9 November 2017 and his trial is still pending.

#### *Allegations concerning the thirteen individuals*

The arrest and detention of the above-mentioned individuals take place in the context of an ongoing widespread crackdown by the Turkish authorities against suspected opponents, following the failed coup on 15 July 2016. Even though the attempt was reportedly perpetrated by soldiers and military officers, starting the next day, judges, prosecutors, journalists, businessmen, academics, civil servants, teachers and others were detained accused of being members of the FETÖ movement. Tens of thousands of public sector employees have been dismissed, and hundreds of media outlets and non-governmental organizations have been shut down.

There is growing consensus that the rule of law has been effectively suspended under the renewed emergency rule and that the courts are practically controlled by the Government of the Turkish President, who allegedly continues to use the criminal justice system, counter terrorism legislation and emergency powers to persecute its political opponents. Most of these opponents are in pre-trial detention, on trumped-up charges of terrorism and coup plotting. Since July 2016, more than 150,000 people have been arrested and interrogated and some 55,000 of them have been detained by Judges of Penal Peace with the accusation of membership of a terrorist organization.

There is an emerging pattern involving the arbitrary deprivation of liberty of "Gülen" followers in Turkey. The Government has outlined a number of actions as pretexts for the arrest and detention of alleged members of the "Gülenist movement," including the above individuals, although they are not defined as crimes in the law. These include: Subscriptions to the Gülenist affiliated Zaman newspaper, journal or magazine; Being a client of Bank Asya; Union membership; Membership in a business association like TUSKON, Volunteering for the charity organization "Kimse Yok Mu"; Possession of the books or other published materials of Mr. Fethullah Gülen; Cancellation of Digiturk suscriptions;

Possession of one-dollar bills; and Criminalization of an encrypted software (ByLock).

In relation to the above individuals, the authorities have failed to provide any credible and admissible evidence, indicating that they may have been involved in a criminal activity.

Many of them were initially detained in a small and unsanitary underground cell at the police station without any information as to why they had been arrested. As they did not know why they had been arrested, neither they nor their lawyers could prepare for the interrogation. In addition, the lawyers were not permitted to speak in their defence, to correct baseless accusations or to object to any questions in any meaningful way.

Prior to their interrogation, they were permitted to meet with their lawyers for the first time, but only for a few minutes and their conversation was recorded and filmed. During their subsequent meetings, their conversations were similarly restricted, monitored and recorded. As such, it was nearly impossible for them to discuss mistreatment while in custody or any details about their legal case. Lawyers were subject to full body searches when they visited, and they could not bring any legal documents with them. Furthermore, they could not leave any reading materials or notes with their clients.

The above individuals were not permitted to choose their own lawyer. The Government provided them with a state appointed attorney, but he or she would avoid meeting with them and tried to convince them to concede the charges. Meanwhile, the private attorneys chosen by the individuals, for those who could afford it, were deprived of basic information related to their clients.

It is reported that several of these individuals have been subjected to torture, ill-treatment and other physical abuse while in police custody. They have been physically threatened and abused, subjected to severe sleep deprivation, forced to confess to fabricated charges and threatened with harm to their family if they did not cooperate. Some were also held in solitary confinement and deprived of food, water, medicine and proper medical attention. They were all subsequently placed in pre-trial detention and transferred to severely overcrowded detention facilities in various parts of the country.

It is also reported that all of the above individuals have suffered fair trial violations, including failing to provide them with a timely explanation of the reason for their arrest and holding them without charge; violations of the right to have time and opportunity to prepare their defence and to call and examine witnesses; violations of the right of access to legal counsel; violations of the principle of the equality of arms; and breach of a reasoned decision.

The ability of the above individuals to pursue domestic remedies with legal and administrative authorities has been limited by significant restrictions on access to justice. They have all taken numerous actions before domestic courts since their arrest and detention but, with very few exceptions, they have proved unfruitful.

While we do not wish to prejudge the accuracy of these allegations, we are raising our serious concerns at the arrest and detention of and charges against Mr. Akman, Ms. Alan, Mr. Turgay Baskan, Ms. Cavus, Mr. Demirel, Mr. Durgun, Mr. Gemi, Ms. Gemi, Mr. Görgün, Mr. Karayel, Mr. Öztürk, Mr. Yasar and Mr. Yilmaz. Our concerns arise from the vague and imprecise charge of “membership of an armed terrorist organization”, which we have seen to be repeatedly misused to target critics of the Government’s policies, particularly since the imposition of the state of emergency, and to criminalize the real or imputed peaceful association of people with the “Gülenist” movement and its legitimate activities. We also reiterate our concerns at the scale of the state of emergency measures, and the repressive environment they have established for the exercise of fundamental rights in Turkey. Grave concerns are also expressed at the allegations of torture and ill-treatment of the above individuals, in particular during police custody, as well as their inadequate access to healthcare, including for a child of one of these individuals, and the potential resulting impact on their physical and mental integrity.

These allegations appear to constitute, *prima facie*, a violation of articles 7, 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which Turkey ratified on 2 August 1988, and articles 3, 5, 6, 10 and 11 of the European Convention on Human Rights (ECHR), ratified by Turkey on 18 May 1954, which guarantee the universally-recognized rights not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, not to be deprived arbitrarily of liberty, and to due process and fair trial, freedom of opinion and expression, and freedom of peaceful assembly and association. The allegations also seem to contravene article 12 of the International Covenant on Economic, Social and Cultural Rights, acceded to by Turkey on 23 September 2003, which establishes the right to the highest attainable standard of physical and mental health and States’ obligation to refraining from denying or limiting equal access for all persons, including prisoners or detainees, to health services.

The international human rights law allows a State to limit the full exercise of derogable rights provided by ICCPR and ECHR when the country is faced with emergency challenges. However, it requires that, even during an armed conflict, measures derogating from ICCPR and ECHR are only allowed if and to the extent that the situation constitutes a fundamental threat to the State. An essential requirement for measures derogating from ICCPR and ECHR is that they be limited to the extent strictly required by the exigencies of the situation. The obligation to limit derogations to those strictly required by the exigencies of the situation reflects the principles of legitimacy, proportionality and necessity.

In this regard, we express concern at the renewal on 18 January 2018 of the derogation from several articles of ICCPR and ECHR following the extension of the state of emergency, which appear not to comply with the requirements of necessity and proportionality under international law, in particular under article 4(1) of ICCPR and article 15(1) of ECHR.

We also draw your Excellency's Government's attention to the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, which all require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal basis for the arrest and detention of the above individuals, and how these measures are compatible with Turkey's international human rights obligations as set forth, inter alia, in the norms and standards referred to above. In particular, please provide details about the evidence used as a basis for the charges against them and how this complies with articles 9 and 14 of the ICCPR and articles 5 and 6 of ECHR.
3. Please provide detailed information about the measures taken by your Excellency's Government to effectively protect, in law, procedures and practice, individuals from ill-treatment and torture while in police custody.

4. Please provide details on the measures taken to ensure the physical and mental integrity of the above individuals while in detention, including any measures to ensure their access to adequate healthcare. Please indicate in particular measures taken to provide adequate healthcare to i) Ms. Alan's three-year-old child who suffers from specific medical conditions and is in prison with her mother, and to ii) Mr. Demirel and iii) Mr. Karayel, both of whom suffer from different chronic health conditions that require daily access to specific healthcare, including particular medical treatment and check-ups, specific food and access to physical activities.
5. Please provide information, if any, about the measures taken to review and revise the state of emergency decrees that have been enforced since 15 July 2016, and most recently renewed on 18 January 2018, in line with international human rights law as recommended by regional and international organizations, including the Council of Europe, the Organization for Security and Co-operation in Europe and the United Nations. In particular, please provide information about the ability of individuals to challenge restrictions to their fundamental rights under these decrees.
6. Please indicate what measures have been taken by your Excellency's Government to ensure that people are able to carry out their legitimate exercise of the right to peaceful assembly and association in a safe and enabling environment, without fear, or threats or acts of intimidation and harassment of any sort, in the full respect of their civil and political rights.

While awaiting a reply to this communication, we urge your Excellency's Government to ensure that while the cases of the above individuals is being investigated, interim measures are taken to protect their human rights; and in the event that the investigation confirm that the allegations are correct, to ensure the accountability of any person responsible for the alleged violations.

Lastly, we would like to inform your Excellency's Government that after having transmitted an urgent appeal such as this to the Government, the Working Group on Arbitrary Detention may also transmit the individual cases to the Government through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is expected to respond separately to the present urgent appeal and to the communication of the Working Group under its regular procedure.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental  
freedoms while countering terrorism

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment